

ATTACHMENT D

INSURANCE TERMS AND CONDITIONS

These Insurance Terms and Conditions set forth the terms and conditions applicable to purchases of Insurance pursuant to section 287.022, Florida Statutes by the Department of Management Services Division of State Purchasing.

SECTION 1. DEFINITIONS

Capitalized terms used herein are defined as follows:

"Attachments" means the attachments, addenda, schedules, exhibits, and other documents, however so titled, attached hereto or incorporated by reference herein.

"Business Days" means Monday through Friday, inclusive, excluding State holidays specified in section 110.117, Florida Statutes ("F.S.").

"**Broker or Contractor"** means an insurance intermediary that holds current and valid Florida resident or nonresident insurance license(s) in the appropriate line of business for the purchase(s) made pursuant to this Contract. Also referred to as Contractor.

"Contract" means a written agreement between the Department and the Broker procured pursuant to section 287.057, F.S. in accordance with section 287.022, F.S.

"Customer" means a state agency as defined in section 287.012,F.S., or Eligible User, as defined herein, included on the insurance policy.

"Department" means the Department of Management Services, an agency as defined in section 287.012, F.S., responsible for the administration of this Contract pursuant to section 287.022, F.S.

"Eligible User" means eligible entities as defined in Rule 60A-1.001(4)(f), F.A.C., for purposes of insurance contracts procured pursuant to section 287.022,F.S., only non-agency state entities with a Department of Financial Services Risk Management Trust Fund Certificate are eligible users.

"Insurance Policy or Policy" means a written contract of insurance as defined in section 627.402, F.S.

"Named Insured" means the agency or Eligible User listed in the attached Scope of Work and any entities added to such list during the Policy Period.

"Policy Period" means the time between the exact hour and date of Policy inception and the hour and date of Policy expiration.

"State" means the State of Florida.

SECTION 2. CONTRACT AMENDMENT

2.1 Amendment. The Contract contains all the terms and conditions agreed upon by the parties. Unless otherwise stated in the Contract, the Contract may only be amended upon mutual written agreement signed by the parties. No oral agreements or representations will be valid or binding upon the Department or the Broker. Unless explicitly agreed to by the Department in the Contract, no unilateral alteration or modification of the Contract terms, will be valid or binding.

SECTION 3. CONTRACT CONSTRUCTION AND ADMINISTRATION

3.1 Construction. Unless the context requires otherwise, (i) the words "include," "includes," and "including" are deemed to be followed by the words "without limitation;" (ii) the word "or" is not exclusive; and (iii) the words "herein," "hereof," "hereby," "hereto," and "hereunder" refer to the Contract as a whole, inclusive of all Attachments. Unless the context requires otherwise, references herein to (i) sections or Attachments mean the sections of, or Attachments to, the Contract; (ii) an agreement, instrument, or other document means such agreement, instrument, or other document as amended, supplemented, and modified from time to time to the extent permitted by the provisions thereof; and (iii) a statute, rule, or other law or regulation means such statute, rule, or other law or regulation as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder.

Unless the context requires otherwise, whenever the masculine is used in the Contract, the same will include the feminine and whenever the feminine is used herein, the same will include the masculine. Unless the context requires otherwise, whenever the singular is used in the Contract, the same will include the plural, and whenever the plural is used herein, the same will include the singular, where appropriate. All references to "$" or "dollars" means the United States Dollar, the official and lawful currency of the United States of America.

The Contract will be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The Attachments referred to herein will be construed with, and as an integral part of, the Contract to the same extent as if they were set forth verbatim herein.

3.2 Administration. Execution in Counterparts. The Contract may be executed in counterparts, each of which will be an original and all of which will constitute but one and the same instrument.

3.2.1 **Notices.** Where the term “written notice” is used to specify a notice requirement herein, said notice will be deemed to have been given (i) when personally delivered;
(ii) email (with confirmation of receipt) the day immediately following the day (except if not a Business Day then the next Business Day) on which the notice or communication has been provided prepaid by the sender to a recognized overnight delivery service; or (iii) on the date actually received except where there is a date of the certification of receipt.

Unless otherwise specified, the Broker shall deliver all notices to the Department’s Contract Manager, and the Department shall deliver all notices to the Broker’s Contract Manager.

3.2.2 **Severability.** If a court deems any non-material provision of the Contract void or unenforceable, all other provisions will remain in full force and effect. Upon a determination that any material provision is void or unenforceable, the parties shall negotiate in good faith to modify this Contract to give effect to the original intent of the parties as closely as possible in order that the transactions contemplated hereby are consummated as originally contemplated to the greatest extent possible.

3.2.3 **Waiver.** The delay or failure by the Department to exercise or enforce any of its rights under the Contract will not constitute or be deemed a waiver of the Department’s right thereafter to enforce those rights, nor will any single or partial exercise of any such right

preclude any other or further exercise thereof or the exercise of any other right.

3.2.4 **Survivability.** The Contract and any and all promises, covenants, and representations made herein are binding upon the parties hereto and any and all respective heirs, assigns, and successors in interest. The respective obligations of the parties, which by their nature would continue beyond the termination or expiration of the Contract, including without limitation, the obligations regarding confidentiality, proprietary interests, reporting, and public records, will survive termination or expiration of the Contract.

3.2.5 **Third Party Beneficiaries.** The parties acknowledge and agree that the Contract is for the benefit of the parties hereto. The Contract is not intended to confer any legal rights or benefits on any other party, except such rights and benefits associated with the Broker's obligations to the Department and its Named Insureds as provided for under the Insurance Policy.

SECTION 4. CONTRACT TERM, SUSPENSION, AND TERMINATION.

4.1 Term. The initial term will begin on the date set forth in the Contract documents .

Upon written agreement, the Department and the Broker may renew the Contract in whole or in part only as set forth in the Contract documents, and in accordance with section 287.057(14), F.S. No costs may be charged for the renewals.

4.2 Suspension of Work and Termination.

4.2.1 **Suspension of Work.** The Department may, in its sole discretion, suspend any or all activities under the Contract, at any time, when it is in the best interest of the State to do so. The Department will provide the Broker written notice outlining the particulars of the suspension. After receiving a suspension notice, the Broker must comply with the notice and will cease the performance of the Contract. Suspension of work will not entitle the Broker to any compensation for services not performed or commodities not delivered during the suspension period nor for any additional compensation.

4.2.2 **Termination for Convenience.** The Contract may be terminated by the Department, by written notice to the Broker thirty (30) calendar days in advance, in whole or in part at any time, when the Department determines in its sole discretion that it is in the Department's interest to do so. The Broker shall cancel the Insurance Policy after it receives the notice of termination, except as necessary to complete the continued portion of the Contract. The Broker will not be entitled to recover any cancellation charges or lost profits. If the Contract is terminated before performance is completed, the Broker will be paid only for that portion of the Policy Period for which costs can be substantiated.

4.2.3 **Termination for Cause.** The Department may terminate the Contract if the Broker fails to (i) on multiple occasions, timely comply with any requirements prescribed herein or in the Scope of Work, (ii) honor any term of the Contract, or (iii) abide by any statutory, regulatory, or licensing requirement. The Department may, at its sole discretion, (i) immediately terminate the Contract, (ii) notify the Broker of the deficiency and require

that the deficiency be corrected within a specified time, otherwise the Contract will terminate at the end of such time, or (iii) take other action deemed appropriate by the Department. The Broker shall continue work on any work not terminated.

Except for defaults of subcontractors at any tier, the Broker will not be liable for any excess costs if the failure to perform arises from events completely beyond the control, and without the fault or negligence, of the Broker. If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is completely beyond the control of both the Broker and the subcontractor, and without the fault or negligence of either, the Broker will not be liable for any excess costs for failure to perform, unless the subcontracted products or services were obtainable from other sources in sufficient time for the Broker to meet the required delivery schedule. If, after termination, it is determined that the Broker was not in default, or that the default was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the Department. The rights and remedies of the Department in this clause are in addition to any other rights and remedies provided by law or under the Contract. The Named Insured(s) will notify the Department if it becomes aware of circumstances that may cause the Broker to meet the grounds for placement of the vendor on the Department of Management Services' Suspended Vendor List, as required in section 287.1351, F.S.

4.2.4 **Termination for Non-Compliance with E-Verify.** Pursuant to section 448.095(5)(c)1., F.S., the Department shall terminate the Contract if it has a good faith belief that the Broker has knowingly violated section 448.09(1), F.S. Pursuant to section 448.095(5)(c)2., F.S., if the Department has a good faith belief that a subcontractor knowingly violated section 448.09(1), F.S., the Department shall promptly notify the Broker and order the Broker to immediately terminate the contract with the subcontractor.

4.2.5 **Termination Related to Statutory Certifications.** At the Department's option, the Contract may be terminated if the Broker is placed on any of the lists referenced in the attached PUR 7801, Vendor Certification Form, or would otherwise be prohibited from entering into or renewing the Contract based on the statutory provisions referenced therein.

4.2.6 **Termination for Refusing Access to Public Records.** In accordance with section 287.058, F.S., the Department may unilaterally terminate the Contract for refusal by the Broker to allow public access to all documents, papers, letters, or other material made or received by the Broker in conjunction with the Contract, unless the records are exempt from s. 24(a) of Art. I of the State Constitution and section 119.071(1), F.S.

SECTION 5. PAYMENT AND FEES.

5.1 Pricing. The Broker shall not exceed the pricing set forth in the Contract documents.

5.2 Invoices. In accordance with the Scope of Work, the following applies to invoicing for this Contract:

5.2.1 Premiums will be invoiced annually at Policy inception for the Named Insured.

5.2.2 Invoices shall contain enough detail for pre-and post-audit. Invoices shall include an invoice number, the insurance company name, Federal Employer Identification Number,

the Policy number, effective dates of coverage, a description of the coverage, payment due date, and a remittance address.

5.2.3 Invoices are to be issued in the name of the respective Named Insured and must be provided in writing to the respective Named Insured and to the Department's Contract Manager.

5.2.4 The Department may, but is not obligated to, assist the Broker in securing these payments to the best of its ability.

5.3 Equitable Adjustment. The Department may, in its sole discretion, make an equitable adjustment in the Contract terms or pricing if pricing or availability of supply is affected by extreme and unforeseen volatility in the marketplace, that is, by circumstances that satisfy all the following criteria: (1) the volatility is due to causes wholly beyond the Broker's control, (2) the volatility affects the marketplace or industry, not just the particular Contract source of supply, (3) the effect on pricing or availability of supply is substantial, and (4) the volatility so affects the Broker that continued performance of the Contract would result in a substantial loss.

5.4 Purchase Prerequisites. The Contractor receiving payment under this Contract must have met the following requirements:

- Have an active registration with the Florida Department of State, Division of Corporations (www.sunbiz.org), or, if exempt from the registration requirements, provide the Department with the basis for such exemption.
- Be registered in the MFMP Vendor Information Portal (https://vendor.myfloridamarketplace.com).
- Have a current W-9 filed with the Florida Department of Financial Services (https://flvendor.myfloridacfo.com).

SECTION 6. PERFORMANCE

6.1 Warranty of Ability to Perform. Upon the effective date of the Contract, and each year on the anniversary date of the Contract, the Contractor shall submit to the Department a completed PUR 7801, Vendor Certification Form. The Contractor warrants that, to the best of its knowledge, there is no pending or threatened action, proceeding, or investigation, or any other legal or financial condition, that would in any way prohibit, restrain, or diminish the Contractor's ability to satisfy its Contract obligations.

Additionally, the Contractor shall promptly notify the Department in writing if its ability to perform is compromised in any manner during the term of the Contract (including potential inability to renew the Contract due to section 287.138 or 908.111, F.S.) or if it or its suppliers, subcontractors, or consultants under the Contract are placed on the Suspended Vendor, Convicted Vendor, Discriminatory Vendor, Forced Labor Vendor, or Antitrust Violator Vendor Lists. The Contractor shall use commercially reasonable efforts to avoid or minimize any delays in performance and shall inform the Department of the steps the Contractor is taking or will take to do so, and the projected actual completion (or delivery) time. If the Contractor believes a delay in performance by the Department has caused or will cause the Contractor to be unable to perform its obligations on time, the Contractor shall promptly so notify the Department and use commercially reasonable efforts to perform its obligations on time notwithstanding the Department's delay.

6.2 Further Assurances. The parties shall, with reasonable diligence, do all things and provide all reasonable assurances as may be necessary to complete the requirements of the Contact, and each party shall provide such further documents or instruments requested by the other party as may be reasonably necessary or desirable to give effect to the Contract and to carry out its provisions. The Department is entitled at all times, upon request, to be advised as to the status of work being done by the Contractor and the details thereof.

6.3 Assignment. The Contractor shall not sell, assign or transfer any of its rights, duties or obligations under the Contract without the prior written consent of the Department. In the event of any assignment, the Contractor remains secondarily liable for performance of the Contract, unless the Department expressly waives such secondary liability. The Department may assign the Contract with prior written notice to Contractor of its intent to do so.

6.4 Employees, Subcontractors, and Agents.

6.4.1 **Subcontractors.** The Contractor will not subcontract any work under the Contract without prior written consent of the Department. The Contractor shall obtain prior written consent using the process identified on the Department's website: Subcontractor/Dealer/Reseller Forms / Vendor Resources / State Purchasing / Business Operations - Florida Department of Management Services (myflorida.com). The use of the term "subcontractor" may refer to affiliates, resellers, dealers, distributors, partners, teammates, and all other third parties utilized by the Contractor at any tier under the Contract. The Contractor is responsible for ensuring that its subcontractors providing commodities and performing services in furtherance of the Contract do so in compliance with the terms and conditions of the Contract. By execution of the Contract, the Contractor acknowledges that it will not be released of its contractual obligations to Customers because of any failure of a subcontractor. The Contractor is fully responsible for satisfactory completion of all work performed under the Contract. The Contractor's use of a subcontractor not approved by the Department will be considered a material breach of the Contract.

6.4.2 **Independent Contractor.** The Contractor and its employees, agents, representatives, and subcontractors are not employees or agents of the Department or the State and are not entitled to the benefits of Department or State employees. Neither the Customer nor the State will be bound by any acts or conduct of the Contractor or its employees, subcontractors, or agents. The Contractor shall include this provision in all of its subcontracts under the Contract.

6.5 Force Majeure, Notice of Delay, and No Damages for Delay. The Contractor will not be responsible for delay resulting from its failure to perform if neither the fault nor the negligence of the Contractor or its employees, subcontractors, or agents contributed to the delay and the delay is due directly to acts of God, wars, acts of public enemies, lightning strikes, fires, floods, or other similar cause wholly beyond the Contractor's control, or for any of the foregoing that affect suppliers if no alternate source of supply is available to the Contractor.

In case of any delay the Contractor believes is excusable, the Contractor shall notify the Department in writing of the delay or potential delay and describe the cause of the delay either (i) within ten (10) calendar days after the cause that creates or will create the delay first arose, if the Contractor could reasonably foresee that a delay could occur as a result; or (ii) if a delay

is not reasonably foreseeable, within five (5) calendar days after the date the Contractor first had reason to believe that a delay could result. THE FOREGOING WILL CONSTITUTE THE CONTRACTOR'S SOLE REMEDY OR EXCUSE WITH RESPECT TO ANY DELAY except if such delay is caused by the fraud, bad faith, or active interference of the Department.

Providing notice in strict accordance with this paragraph is a condition precedent to such remedy, and a rebuttable presumption of prejudice will exist based on Contractor's untimely notice. The Contractor shall not assert any claim for damages related to such delay. The Contractor will not be entitled to an increase in the Contract price or payment of any kind from the Department for direct, indirect, consequential, impact, or other costs, expenses, or damages, including costs of acceleration or inefficiency, arising because of delay, disruption, interference, or hindrance from any cause whatsoever.

If performance is suspended or delayed, in whole or in part, due to any of the causes described in this subsection, the Department may unilaterally (and with no recourse on the part of the Contractor) identify and use an alternate source to complete any work under the Contract as the Department deems necessary, in its sole discretion. After the causes have ceased to exist, the Contractor shall perform at no increased cost, unless the Department determines, in its sole discretion, that the delay will significantly impair the value of the Contract to the Department or State, in which case the Department may (i) accept allocated performance or deliveries from the Contractor, provided that the Contractor grants preferential treatment to the Department with respect to Policy subjected to allocation; or (ii) terminate the Contract in whole or in part.

SECTION 7. CONTRACT MANAGEMENT

7.1 Department's Contract Manager. The Department's Contract Manager for the Contract, who is primarily responsible for the Department's oversight of the Contract, will be identified in a separate writing to the Contractor upon Contract signing in the following format:

Department's Contract Manager Name
Department's Name
Department's Physical Address
Department's Telephone #
Department's Email Address

7.2 Contractor's Contract Manager. The Contractor's Contract Manager, who is primarily responsible for the Contractor's oversight of the Contract performance, will be identified in a separate writing to the Department on the Broker Information Form.

Either party may notify the other by email of a change to a designated contact providing the contact information for the newly designated contact, and such notice is sufficient to effectuate this change without requiring a written amendment to the Contract.

SECTION 8. COMPLIANCE WITH LAWS.

8.1 Conduct of Business. The Contractor shall comply with all laws, rules, codes, ordinances, and licensing requirements that are applicable to the conduct of its business and that are applicable to the Contract, including those of federal, state, and local agencies having jurisdiction and authority, and shall ensure that any and all subcontractors utilized do the

same. The Contractor represents and warrants that no part of the funding under the Contract will be used in violation of any state or federal law, including, but not limited to, 8 U.S.C. § 1324 or 8 U.S.C. § 1325, or to aid or abet another in violating state or federal law. The Department may terminate the Contract at any time if the Contractor violates, or aids or abets another in violating, any state or federal law.

If the requirements of the Contract conflict with any governing law, codes or regulations, the Contractor shall notify the Department in writing and the parties shall amend the Contract to comply with the applicable code or regulation. Similarly, if the Contractor believes that any governmental restrictions have been imposed that require alteration of the material, quality, workmanship or provision of the Policy offered under the Contract, the Contractor shall immediately notify the Department in writing, indicating the specific restriction. The Department reserves the right and the complete discretion to accept any such alteration or to cancel the Contract at no further expense to the Department.

Pursuant to section 287.057(26), F.S., the Contractor shall answer all questions of, and ensure a representative will be available to, a Customer's continuing oversight team for purchases off this Contract.

8.2 Integrity. In addition to any applicable statutory restrictions, the Contractor shall not, in connection with this or any other agreement with the State, directly or indirectly (i) offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for any State officer or employee's decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty; or (ii) offer, give, or agree to give to anyone any gratuity for the benefit of, or at the direction or request of, any State officer or employee. For purposes of clause (ii), "gratuity" means any payment in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind.

SECTION 9. DISPUTES AND LIABILITIES.

9.1 Dispute Resolution. Should any disputes arise between the Department and the Contractor with respect to the Contract, the Contractor and the Department shall act immediately to resolve any such disputes. Time is of the essence in the resolution of disputes.

Exhaustion of this administrative remedy detailed in the Dispute Resolution Process contemplated in this Contract is an absolute condition precedent to the Contractor's ability to seek other remedies related to the Contract.

9.2 Dispute Resolution Process.

(a) Department Review. The parties shall resolve disputes through written submission of their dispute to the Department's Contract Manager. The Department shall respond to the dispute in writing within ten (10) Business Days from the date that the Department's Contract Manager receives the dispute. The Department's decision shall be final unless a party provides the other party with written notice of the party's disagreement with the decision within ten (10) Business Days from the date of the Department's decision. If a party disagrees with the Department's decision, the party may proceed to subsection (b) below.

Meeting between the Principals. If either party disagrees with the Department's decision, such disagreeing party shall notify the other party of the disagreement within ten (10)

Business Days. The parties shall then schedule a meeting between each party's principal (for the Department, the Department head or designee; for the Contractor, the Chief Executive Officer or designee) on a mutually agreed upon date, no later than ten (10) Business Days after the provision of the notice. The principals shall attempt to mutually resolve the disagreement at such meeting.

(b) Mediation. If the dispute is not resolved through a meeting of the Principals, the parties, upon mutual agreement, may mediate such dispute. If such mediation is not completed within 100 calendar days from receipt of the Department's decision, then either party may seek other remedies.

If the dispute is not resolved through the full process in subsections (a) - (c) above (or (a) – (b), if mediation is not agreed to), either party may pursue any other remedies.

9.3 Contractor's Obligation to Perform While Disputes are Pending. The Contractor shall proceed diligently with performance under the Contract pending the final resolution of any dispute or request for relief, claim, appeal, or action arising under the Contract and shall comply with directions to perform from the Department. Should the Contractor not perform while a dispute is pending, including by not performing disputed work, such nonperformance by the Contractor may be deemed to be an unexcused breach of the Contract which is separate and apart from any other dispute.

9.4 Governing Law and Venue. The Contract will be governed by, and construed in accordance with, the laws of the State. Jurisdiction and venue for suit arising under the terms of the Contract will exclusively be in the appropriate State court located in Leon County, Florida. Except as otherwise provided by law, the parties agree to be responsible for their own attorney's fees and costs incurred in connection with disputes arising under the terms of the Contract.

9.5 Remedies Cumulative. No remedy herein conferred upon or reserved to either party is intended to be exclusive of any other remedy or remedies, and each and every such remedy will be cumulative, and will be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity.

9.6 JURY WAIVER. THE PARTIES, ON BEHALF OF THEMSELVES AND ASSIGNS, WAIVE ALL RIGHT TO TRIAL BY JURY FOR ANY ACTION, APPEAL, CLAIM, OR PROCEEDING, WHETHER IN LAW IN OR IN EQUITY, WHICH IN ANY WAY ARISES OUT OF OR RELATES TO THE CONTRACT OR ITS SUBJECT MATTER.

9.7 **Indemnification**. For any and all third-party claims, actions, demands, liabilities, and expenses of any kind which are caused by, related to, growing out of or happening in connection with the Contract (including any determination arising out of or related to the Contract that the Contractor or its employees, agents, subcontractors, assignees, or delegates are not independent contractors in relation to the Department or State), the Contractor shall be fully liable for the actions of its employees, subcontractors, and agents and shall fully indemnify, defend, and hold harmless the Department and the State (including each of their current and former officers, agents, and employees) for any and all loss, damage, injury, costs, reasonable expenses, or other casualty to person or property. Without limiting this indemnification requirement, the Department may provide the Contractor (i) written notice of any action or threatened action, (ii)

the opportunity to take over and settle or defend any such action at the Contractor's sole expense, and (iii) assistance in defending the action at the Contractor's sole expense. The above indemnity requirement does not apply to that portion of any loss or damages proximately caused by the negligent act or omission of the Department or the State. Nothing herein is intended to act as a waiver of the Department's or State's sovereign immunity or to be deemed consent by the Department or State or its subdivisions to suit by third parties.

SECTION 10. MISCELLANEOUS.

10.1 Department of State Registration. Consistent with Title XXXVI, F.S., if the Contractor asserts status other than that of a sole proprietor, it must provide the Department with i) conclusive evidence of a certificate of status, not subject to qualification, if a Florida business entity; ii) a certificate of authorization if a foreign business entity; or iii) if exempt from the registration requirements, a basis for such exemption.

10.2 **Time is of the Essence**. Time is of the essence regarding every obligation of the Contractor under the Contract. Each obligation is deemed material, and a breach of any such obligation (including a breach resulting from untimely performance) is a material breach.

SECTION 11. PUBLIC RECORDS, TRADE SECRETS, DOCUMENT MANAGEMENT, AND INTELLECTUAL PROPERTY.

11.1 **General Record Management and Retention.** The Contractor shall retain all records that were made in relation to the Contract for the longer of five (5) years after expiration of the Contract or the period required by the General Records Schedules maintained by the Florida Department of State available at: https://dos.fl.gov/library-archives/records-management/general-records-schedules/.

11.2 **Identification and Protection of Confidential Information.** Article 1, section 24, of the Florida Constitution, guarantees every person access to public records, and section 119.011, F.S., provides a broad definition of "public record." As such, records submitted to the Department (or any other State agency) are public records and are subject to disclosure unless exempt from disclosure by law. If the Contractor considers any portion of a record it provides to the Department (or any other State agency) to be trade secret or otherwise confidential or exempt from disclosure under Florida or federal law ("Confidential Information"), the Contractor shall mark as "confidential" each page of a document or specific portion of a document containing Confidential Information and simultaneously provide the Department (or other State agency) with a separate, redacted copy of the record. The Contractor shall state the basis of the exemption that the Contractor contends is applicable to each portion of the record redacted, including the specific statutory citation for such exemption. The Contractor shall only redact portions of records that it claims contains Confidential Information. If the Contractor fails to mark a record it claims contains Confidential Information as "confidential," or fails to submit a redacted copy in accordance with this section of a record it claims contains Confidential Information, the Department (or other State agency) shall have no liability for release of such record. The foregoing will apply to every instance in which the Contractor fails to both mark a record "confidential" and redact it in accordance with this section, regardless of whether the Contractor may have properly marked and redacted the same or similar Confidential Information in another instance or record submitted to the Department (or any other State agency).

In the event of a public records request, to which records the Contractor marked as "confidential" are responsive to the request, the Department shall provide the Contractor-redacted copy to the requestor. If the Contractor has marked a record as "confidential" but failed to provide a Contractor-redacted copy to the Department, the Customer may notify the Contractor of the request and the Contractor may have up to ten (10) Business Days from the date of the notice to provide a Contractor-redacted copy, or else the Department may release the unredacted record to the requestor without liability. If the Department provides a Contractor- redacted copy of the documents and the requestor asserts a right to the Contractor-redacted Confidential Information, the Department shall promptly notify the Contractor such an assertion has been made. The notice will provide that if the Contractor seeks to protect the Contractor-redacted Confidential Information from release it must, within thirty (30) days after the date of the notice and at its own expense, file a cause of action seeking a declaratory judgment that the information in question is exempt from section 119.07(1), F.S., or other applicable law and an order prohibiting the Department from publicly disclosing the information. The Contractor shall provide written notice to the Department of any cause of action filed. If the Contractor fails to file a cause of action within thirty (30) days the Department may release the unredacted copy of the record to the requestor without liability.

If the Department is requested or compelled in any legal proceeding to disclose documents that are marked as "confidential" (whether by oral questions, interrogatories, requests for information or documents, subpoena, or similar process), unless otherwise prohibited by law, the Department shall give the Contractor prompt written notice of the demand or request prior to disclosing any Confidential Information to allow the Contractor to seek a protective order or other appropriate relief at the Contractor's sole discretion and expense. If the Contractor fails to take appropriate and timely action to protect the Confidential Information contained within documents it has marked as "confidential" or fails to provide a redacted copy that may be disclosed, the Department may provide the unredacted records in response to the demand without liability.

The Contractor shall protect, defend, and indemnify the Department for all claims, costs, fines, settlement fees, and attorneys' fees, at both the trial and appellate levels, arising from or relating to the Contractor's determination that its records contain Confidential Information. In the event of a third-party claim brought against the Department for failure to release the Contractor's redacted Confidential Information, the Contractor shall assume, at its sole expense, the defense or settlement of such claim, including attorney's fees and costs at both the trial and appellate levels. If the Contractor fails to continuously undertake the defense or settlement of such claim or if the Contractor and Department mutually agree that the Department is best suited to undertake the defense or settlement, the Department will have the right, but not the obligation, to undertake the defense or settlement of such claim, at its discretion. The Contractor shall be bound by any defense or settlement the Department may make as to such claim, and the Contractor agrees to reimburse the Department for the expense, including reasonable attorney's fees and costs at both the trial and appellate levels associated with any defense or settlement that the Department may undertake to defend Contractor's Confidential Information. The Department will also be entitled to join the Contractor in any third-party claim for the purpose of enforcing any right of indemnity under this section.

If at any point the Department is reasonably advised by its counsel that disclosure of the Confidential Information is required by law, including but not limited to Florida's public records laws, the Department may disclose such Confidential Information without liability hereunder.

11.3 **Public Records Requirements Pursuant to Section 119.0701, F.S.** Solely for the purpose of this section, the Department's Contract Manager is the agency custodian of public records. If, under the Contract, the Contractor is providing services and is acting on behalf of the public agency, as provided in section 119.0701, F.S., the Contractor shall:

i. Keep and maintain public records required by the Department to perform the service.

ii. Upon request from the Department's custodian of public records, provide the Department with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, F.S., or as otherwise provided by law.

iii. Ensure that public records that are exempt or confidential and exempt from public records disclosure are not disclosed except as authorized by law for the duration of the Contract term and following the completion of the Contract if the Contractor does not transfer the records to the Department.

iv. Upon completion of the Contract, transfer, at no cost, to the Department all public records in possession of the Contractor or keep and maintain public records required by the Department to perform the service. If the Contractor transfers all public records to the Department upon completion of the contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the Contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the Department, upon request from the Department's custodian of public records, in a format that is compatible with the information technology systems of the Department.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS TERM CONTRACT, CONTACT THE DEPARTMENT'S CUSTODIAN OF PUBLIC RECORDS AT PUBLICRECORDS@DMS.FL.GOV, (850) 487-1082 OR 4050 ESPLANADE WAY, SUITE 160, TALLAHASSEE, FLORIDA 32399-0950.

11.4 Advertising. Subject to Chapter 119, Florida Statutes, the Contractor shall not publicly disseminate any information concerning the Contract without prior written approval from the Department, including mentioning the Contract in a press release or other promotional material, identifying the Department or the State as a reference, or otherwise linking the Contractor's name and either a description of the Contract or the name of the Department or the State in any material published, either in print or electronically, to any entity that is not a party to the Contract, except potential or actual Customers or authorized distributors, dealers, resellers, or service representatives.

SECTION 12. DATA SECURITY.

The Contractor will maintain the security of State of Florida data including, but not limited to, maintaining a secure area around any displayed visible data and ensuring data is stored and secured when not in use. "State of Florida data" means data collected by, transmitted from, created for, or provided by the Department or the Customer. The Contractor will protect personal identifying information, confidential, or exempt information from being transmitted outside of the United States. In the event of a Security Incident involving State of Florida data, the Contractor

shall give notice to the Customer and the Department within one business day of becoming aware of the Security Incident. “Security Incident” for purposes of this section will refer to an actual or imminent threat of a violation of information technology resources, security, policies, or practices, unauthorized access of State of Florida data, or occurrences that compromise the confidentiality, integrity, or availability of State of Florida data. An imminent threat refers to a situation in which the Contractor has a factual basis for believing that a specific incident is about to occur. Once a data breach has been contained, the Contractor must provide the Department and the Customer with a post-incident report documenting all containment, eradication, and recovery measures taken. The Department reserves the right in its sole discretion to enlist a third party to audit Contractor’s findings and produce an independent report, and the Contractor will fully cooperate with the third party. The Contractor will also comply with all HIPAA requirements and any other current state and federal rules and regulations regarding security of information.

SECTION 13. CONTRACT MONITORING.

13.1 Performance Standards. The Contractor agrees to perform all tasks and provide deliverables as set forth in the Contract. The Customer will be entitled at all times, upon request, to be advised as to the status of work being done by the Contractor and of the details thereof.

13.2 Business Review Meetings. Both the Department and Customer reserve the right to schedule business review meetings. The Department or Customer may specify the format or agenda for the meeting. At a minimum, the Business Review Meeting may include the following topics:

- Contract compliance
- Contract savings (in dollar amount and cost avoidance)
- Spend reports by Customer
- Recommendations for improved compliance and performance

13.3 Performance Deficiencies.

13.3.1 Proposal of a Corrective Action Plan. In addition to the processes set forth in the Contract, if the Customer or the Department determines that there is a performance deficiency that requires correction by the Contractor, then the Customer or the Department will notify the Contractor. The correction must be made within a timeframe specified by the Customer or the Department. The Contractor must provide the Customer or the Department with a corrective action plan describing how the Contractor will address all performance deficiencies identified by the Customer or the Department.

13.3.2 Retainage for Unacceptable Corrective Action Plan or Plan Failure. For Customer-requested Corrective Action Plans, if the corrective action plan is unacceptable to the Customer, or implementation of the plan fails to remedy the performance deficiencies, the Customer will retain ten percent (10%) of the total invoice amount. The retainage will be withheld until the Contractor resolves the performance deficiencies. If the performance deficiencies are resolved, the Contractor may invoice the Customer for the retained amount. If the Contractor fails to resolve the performance deficiencies, the retained amount will be forfeited to compensate the Customer for the performance deficiencies.

13.4 Inspection.

13.4.1 **Statutory Inspection Rights.** If services are to be provided pursuant to the Contract, in accordance with section 216.1366, F.S., the Department is authorized to inspect the: (i) financial records, papers, and documents of the Contractor that are directly related to the performance of the Contract or the expenditure of State funds; and (ii) programmatic records, papers, and documents of the Contractor which the Department determines are necessary to monitor the performance of the Contract or to ensure that the terms of the Contract are being met. The Contractor shall provide such records, papers, and documents requested by the Department within ten (10) Business Days after the request is made.

Further, for any Contract for services with a nonprofit organization as defined in section 215.97(2)(m), F.S., the Contractor must provide documentation that indicates the amount of state funds:

13.4.1.1 Allocated to be used during the full term of the Contract for remuneration to any member of the board of directors or an officer of the contractor; and

13.4.1.2 Allocated under each payment by the public agency to be used for remuneration of any member of the board of directors or an officer of the contractor.

The documentation must indicate the amounts and recipients of the remuneration

13.4.2 **Inspection Compliance.** The Contractor understands its, and its subcontractors (if any), duty, pursuant to section 20.055(5), F.S., to cooperate with the Inspector General in any investigation, audit, inspection, review, or hearing. Upon request of the Department's Inspector General, or other authorized State official, the Contractor shall provide any type of information the State official deems relevant to the Contractor's integrity or responsibility. Such information may include the Contractor's business or financial records, documents, or files of any type or form that refer to or relate to the Contract. The Contractor agrees to reimburse the State for the reasonable costs of investigation incurred by the Inspector General or other authorized State official for investigations of the Contractor's compliance with the terms of the Contract or any other agreement between the Contractor and the State which results in the suspension or debarment of the Contractor. Such costs will include salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The Contractor shall not be responsible for any costs of investigations that do not result in the Contractor's suspension or debarment.

SECTION 14. PERFORMANCE OR COMPLIANCE AUDITS.

The Department may conduct or have conducted performance and/or compliance audits of the Contractor and subcontractors as determined by the Department. The Department may conduct an audit and review all the Contractor's and subcontractors' data and records that directly relate to the Contract. To the extent necessary to verify the Contractor's fees and claims for payment under the Contract, the Contractor's agreements or contracts with subcontractors, partners, or agents of the Contractor, pertaining to the Contract, may be inspected by the Department upon fifteen (15) calendar days' notice, during normal working hours and in accordance with the

Contractor's facility access procedures where facility access is required. Release statements from its subcontractors, partners, or agents are not required for the Department or its designee to conduct compliance and performance audits on any of the Contractor's contracts relating to this Contract.

SECTION 15. CONFIDENTIALITY.

The Contractor shall not divulge to third parties any confidential information obtained by the Contractor or its employees, subcontractors, or agents in the course of performing Contract work, including security procedures, business operations information, or commercial proprietary information in the possession of the Customer or State. The Contractor will not be required to keep confidential information or material that is publicly available through no fault of the Contractor, material that the Contractor developed independently without relying on the Customer's or State's confidential information, or material that is otherwise obtainable under State law as a public record. To ensure confidentiality, the Contractor shall take appropriate steps as to its employees, subcontractors, and agents.

SECTION 16. SUPPLIER DEVELOPMENT.

16.1 **Office of Supplier Development.** The State of Florida supports its business community by creating opportunities for business enterprises to participate in procurements and contracts. The Department encourages supplier development through certain certifications and provides advocacy, outreach, and networking through regional business events. For additional information, please contact the Office of Supplier Development (OSD) at OSDHelp@dms.fl.gov.

SECTION 17. PUR1000 GENERAL CONTRACT CONDITONS.

17.1 **Form PUR1000.** In accordance with Rule 60A-1.002(7), F.A.C., form PUR 1000, General Contract Conditions (07/24), is incorporated by reference and is accessible at: https://dms-media.ccplatform.net/content/download/2933/file/PUR%201000%20%28General%20Contract%20Conditions%29.pdf . Any terms and conditions set forth in these Insurance Terms and Conditions take precedence over the form PUR 1000 where applicable. The following sections are not applicable to this Contract and are therefore deleted in their entirely: Sections 5e, 5f, 5g, 5h, 5i, 5j, 5k,5l, 5m, 6a, 7d and 12.